

separate document titled Statement of Uncontested Facts, which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to the supporting affidavits or declarations and documents, if any, and to the 6101.4 appeal file exhibits relied upon to support such statement.

(3) An opposing party shall file with its opposition (or cross-motion) a separate document titled Statement of Genuine Issues. This document shall identify, by reference to specific paragraph numbers in the moving party's Statement of Uncontested Facts, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement and give its version of the facts. This statement shall include references to the supporting affidavits or declarations and documents, if any, and to the 6101.4 appeal file exhibits that demonstrate the existence of a genuine dispute. An opposing party may also file a Statement of Uncontested Facts as to any relevant matters not covered by the moving party's statement.

(4) When a motion for summary relief is made and supported as provided in this section, an opposing party may not rest upon the mere allegations or denials of its pleadings, but the opposing party's response, by affidavits or as otherwise provided by this section, must set forth specific facts showing that there is a genuine issue of material fact. If the opposing party does not so respond, summary relief, if appropriate, shall be entered against that party. For good cause shown, if an opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may make such other order as is just.

(h) *Effect of pending motion.* Except as this part and part 6102 provide or the Board may order, a pending motion shall not excuse the parties from proceeding with the case in accordance

with this part and part 6102 and the orders and directions of the Board.

6101.9 Election of hearing or record submission [Rule 109].

Each party shall inform the Board, in writing, whether it elects a hearing or submission of its case on the record pursuant to 6101.11. Such an election may be filed at any time unless a time for filing is prescribed by the Board. A party electing to submit its case on the record pursuant to 6101.11 may also elect to appear at a hearing solely to cross-examine any witness presented by the opposing party, provided that the Board is informed of that party's intention within 10 working days of its receipt of notice of the election of hearing by the other party. If a hearing is elected, the election should state where and when the electing party desires the hearing to be held and should explain the reasons for its choices. A hearing will be held if either party elects one. If a party's decision whether to elect a hearing is dependent upon the intentions of the other party, it shall consult with the other party before filing its election. If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the party or parties electing the hearing. The record submissions from a party that has elected to submit its case on the record shall be due as provided in 6101.11.

6101.10 Conferences; conference memorandum; prehearing order; prehearing and presubmission briefs [Rule 110].

(a) *Conferences.* The Board may convene the parties in conference, either by telephone or in person, for any purpose. The conference may be stenographically or electronically recorded, at the discretion of the Board. Matters to be considered and actions to be taken at a conference may include:

(1) Simplifying, clarifying, or severing the issues;

(2) Stipulations, admissions, agreements, and rulings to govern the admissibility of evidence, understandings on matters already of record, or other similar means of avoiding unnecessary proof;

(3) Plans, schedules, and rulings to facilitate discovery;

(4) Limiting the number of witnesses and other means of avoiding cumulative evidence;

(5) Stipulations or agreements disposing of matters in dispute; or

(6) Ways to expedite disposition of the case or to facilitate settlement of the dispute, including, if the parties and the Board agree, the use of alternative dispute resolution techniques, as provided in 6102.1 and 6102.4.

(b) *Conference memorandum.* The Board may prepare a memorandum of the results of a conference or issue an order reflecting any actions taken, or both. A memorandum or order so issued shall be placed in the record of the case and sent to each party. Each party shall have 5 working days after receipt of a memorandum to object to the substance of it.

(c) *Prehearing order.* The Board may issue a prehearing or presubmission order to govern the proceedings in a case.

(d) *Prehearing or presubmission briefs.* A party may, by leave of the Board, file a prehearing or presubmission brief at any time before the hearing or upon or before the date on which first record submissions are due.

6101.11 Submission on the record without a hearing [Rule 111].

(a) *Submission on the record.* (1) A party may elect to submit its case on the record without a hearing. A party submitting its case on the record may include in its written record submission or submissions:

(i) Any relevant documents or other tangible things it wishes the Board to admit into evidence;

(ii) Affidavits, depositions, and other discovery materials that set forth relevant evidence; and

(iii) A brief or memorandum of law.

(2) The Board may require the submission of additional evidence or briefs and may order oral argument in a case submitted on the record.

(b) *Time for submission.* (1) If both parties have elected to submit the case on the record, the Board will issue an order prescribing the time for initial and, if appropriate, reply record submissions.

(2) If one party has elected a hearing and the other party has elected to submit its case on the record, the party submitting on the record shall make its initial submission no later than the commencement of the hearing or at an earlier date if the Board so orders, and a further submission in the form of a brief at the time for submission of posthearing briefs.

(c) *Objections to evidence.* Unless otherwise directed by the Board, objections to evidence (other than the appeal file and supplements thereto) in a record submission may be made within 10 working days after the filing of the submission. Replies to such objections, if any, may be made within 10 working days after the filing of the objection. The Board may rule on such objections in its opinion deciding the merits or otherwise disposing of the case.

6101.12 Record of Board proceedings [Rule 112].

(a) *Composition of the record for decision.* (1) The record upon which any decision of the Board will be rendered consists of:

(i) The notice of appeal, petition, or application;

(ii) Appeal file exhibits other than those as to which objection has been sustained;

(iii) Hearing exhibits other than those as to which an objection has been sustained;

(iv) Pleadings;

(v) Motions and responses thereto;

(vi) Memoranda, orders, rulings, and directions to the parties issued by the Board;

(vii) Documents and other tangible things admitted in evidence by the Board;

(viii) Written transcripts or electronic recordings of proceedings;

(ix) Stipulations and admissions by the parties;

(x) Depositions, or parts thereof, received in evidence;

(xi) Written interrogatories and responses received in evidence;

(xii) Briefs and memoranda of law; and

(xiii) Anything else that the Board may designate.

(2) All other papers and documents in a case are part of the administrative